



October 26, 2000

Ms. Jan Clark
Assistant City Attorney
City of Houston-Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-4165

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 140610.

The City of Houston (the "city") received a request for information related to a specified address. The city states that it will provide the requestor with basic information from the offense reports pursuant to section 552.108(c) of the Government Code. You claim that the remainder of the information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the documents submitted as Exhibit 6 concern a sexual assault. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

This office has found that, in general, section 552.101 does not except from public disclosure the names of crime victims. *See* Open Records Decision No. 409 at 2 (1984). However, we have concluded that the names of victims of sexual assault and child victims of sexual abuse and serious sexual offenses are excepted from public disclosure under section 552.101 and common law privacy grounds. *See* Open Records Decision No. 339 at 2 (1982). In Exhibit 6, the police report pertains to a sexual assault. We believe that the requirements of

common law privacy may be satisfied by redacting, prior to release, identifying information such as the victim's name (if given),¹ work information, the names of others such as family members through whom the victim could be identified, the victim's and such other individuals' addresses and telephone numbers, and the locations of the crimes if they coincide with the victim's address or otherwise tend to specifically identify the victim. Therefore, you must withhold the victim's identifying information in Exhibit 6.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city explains that the documents contained in Exhibit 6 relate to an ongoing investigation. Because the investigation is pending, we believe that the release of the information would interfere with the detection, investigation, or prosecution of crime. Thus, you may withhold Exhibit 6 under section 552.108(a)(1). You also inform this office that "no arrests were made as a result of" the subject investigations for Exhibits 2, 3, 4, 5, and 7; further, you claim that these investigations "did not result in a conviction or a deferred adjudication." Information may not be withheld under section 552.108(a)(2) unless the information relates to a criminal investigation or prosecution that concluded in a result other than a conviction or deferred adjudication. Based upon your representations, we find that you may withhold Exhibits 2, 3, 4, 5, and 7 under section 552.108(a)(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

¹Note that pseudonyms are not identifying information and therefore should be released.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 140610

Encl: Submitted documents

cc: Ms. Patricia A. Cantu
Attorney at Law
1314 Texas Avenue, Suite 1660
Houston, Texas 77002
(w/o enclosures)